Architectural Contractors Trade Association *and* Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO and Local 9, International Union of Bricklayers and Allied Craftworkers, AFL–CIO. Case 7–RC–22466

September 30, 2004

DECISION ON REVIEW AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On July 9, 2003, the Regional Director for Region 7 issued a Decision and Order in which he found the petitioned-for multiemployer plasterers unit inappropriate and dismissed the petition. Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's Decision and Order in which it argued that the Regional Director erred in finding that the Petitioner and the Employer intended to create single-employer units governed by a common collective-bargaining agreement. Instead, the Petitioner argues that the parties intended to create a multiemployer bargaining unit and that the petitioned-for coextensive unit is appropriate. On September 17, 2003, the Board granted the Petitioner's request for review solely with respect to the appropriateness of the petitioned-for multiemployer unit. The Petitioner filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

After careful consideration of the entire record, including the Petitioner's brief on review, we find, contrary to the Regional Director, that the petitioned-for unit is appropriate because the Petitioner and the Employer created and maintained a multiemployer bargaining unit.[1]

The Employer is a multiemployer association consisting of approximately 50 contractors employing over 2000 employees in different skilled trades. Of these 50 members, approximately 9 contractors employ plasterers. The Employer and the Petitioner have been in a collective-bargaining relationship since 1985. In 1995, the individual members of the Employer signed powers of attorney delegating authority to the Employer's predecessor, Detroit Association of Wall & Ceiling Contractors, to negotiate and sign collective-bargaining agreements and to handle all matters pertaining to labor relations, including handling and settling all labor controversies, disputes, and interpretations of collective-bargaining agreements.[2] The Petitioner and the Employer were parties to an 8(f) agreement effective from June 1, 1997, through May 31, 1999. In 2000, the Petitioner and the Employer entered into a successor agreement, effective from August 1, 2000, through May 31, 2003 (2000 Agreement), and changed their relationship from one governed by Section 8(f) to one governed by Section 9(a).[3] The 2000 Agreement referred to members of the Employer collectively as the "Employer" and contained the following recognition language:

> The Employer hereby recognizes Local 67 as the sole Collective Bargaining Agent for all journeymen and apprentice plasterers in the employment of the Employer with respect to wages, hours and other terms and conditions of employment on any and all work described in this agreement whenever possible.
>
> Each Employer, in response to the Union's claim that it represents a majority of each Employer's employees acknowledges and agrees that there is no good faith doubt that the Union has been authorized to, and in fact does, represent such majority of employees.
>
> The Employer agrees to recognize, in such case, the Plasterers & Cement Masons Local 67 as the majority representative of its Employees pursuant to Section 9(a) of the Labor Management Relations Act. They are now or hereafter the sole and exclusive collective bargaining representatives for the employees in the bargaining unit with respect to wages, hours of work and all other terms and conditions of employment.

The Regional Director found that the above-quoted recognition language evidenced an intent to create single-employer bargaining units. Finding no evidence to rebut the presumption of a single-employer unit, the Regional Director found the petitioned-for unit inappropriate. We disagree.

A multiemployer bargaining unit is appropriate where "the employers involved have evidenced a clear intent to participate in multiemployer bargaining and to be bound by the actions of the bargaining agent." *Hunts Point Recycling Corp.*, 301 NLRB 751, 752 (1991). Where an employer is part of a multiemployer bargaining relationship governed by Section 9(a), a petition for a single-employer unit will not be entertained. See *Casale Industries,* 311 NLRB 951, 952 (1993). However, to overcome the single-employer presumption and find a mul-

[1] See also *Arbor Construction Personnel, Inc.*, 343 NLRB No. 38 (2004), which we have issued today involving the same unions and an analogous issue.

[2] No party contends that any of the individual contractors have revoked this power of attorney.

[3] No party disputes that Section 9(a) governs the Employer's and the Petitioner's relationship.

tiemployer bargaining unit appropriate, the Board requires more than the mere adoption of an areawide contract, which includes a "one unit" clause. See *Schaetzel Trucking, Inc.*, 250 NLRB 321, 323 (1980); *Gordon Electric Co.*, 123 NLRB 862, 863 (1959). Instead, the Board requires evidence of an unequivocal intent to be bound by group action manifested by either participation in the group bargaining or delegation of authority to another to engage in such bargaining. See *Schaetzel Trucking*, 250 NLRB at 323.

Here, both the 1995 power of attorney and the 2000 Agreement evidence an unequivocal intent by the individual contractor-members of the Employer to be bound by group action over at least the past 9 years.[4] The individual contractors explicitly delegated to the Employer the authority to engage in bargaining and to sign collective-bargaining agreements. Further, some of the individual contractor-members of the Employer designated representatives to sit on bargaining committees to negotiate collective-bargaining agreements in past years. The express delegation of authority to the Employer and the individual contractors' participation in group negotiations provides sufficient evidence to overcome the single-employer presumption. That the 2000 Agreement provides for recognition under Section 9(a) only after majority status at each member employer is shown is not inconsistent with a multiemployer bargaining unit. See *Painters* (*Northern California Drywall Contractors Assn.)*, 326 NLRB 1074, 1079 (1998), quoting *James Luterbach Construction Co.*, 315 NLRB 976, 979 (1994) ("Each of the employers has a Section 9 bargaining relationship with the union, and the multiemployer group (consisting of those employers) has a Section 9 relationship with the union.").

In sum, we find that the petitioned-for multiemployer unit is appropriate in light of the existence of a controlling history of multiemployer bargaining. Accordingly, we remand this case to the Regional Director for further action consistent with this Decision.

ORDER

The Regional Director's Decision and Order is reversed. This proceeding is remanded to the Regional Director for further appropriate action consistent with this Order.

[4] We note that the Intervenor is also party to a multiemployer collective-bargaining agreement covering at least some of the members of the Employer.